

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: Squad #11	CCRB Case #: 201607457	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/21/2016 3:00 PM	Location of Incident: Orchard Beach	Precinct: 45	18 Mo. SOL 2/21/2018	EO SOL 2/21/2018	
Date/Time CV Reported Wed, 08/24/2016 6:01 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/30/2016 11:03 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Rios	27074	933254	PBBX
2. POM Edwin Garcia	31744	926865	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Rios	Discourtesy: Police Officer Michael Rios spoke discourteously to § 87(2)(b)	
B.POM Michael Rios	Abuse: Police Officer Michael Rios issued a summons to § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

### Case Summary

On August 24, 2016, § 87(2)(b) called the IAB Command Center to file this complaint on his own behalf (IAB original log #16-30195). The complaint was forwarded to the CCRB, where it was received on August 30, 2016. There is no video footage of this incident.

On August 21, 2016, at approximately 3:00 p.m., § 87(2)(b) was at Orchard Beach in the Bronx. § 87(2)(b) testified (Board Review 01) that he had two unopened, 12-ounce cans of Coors Light beer, one in each of his front two swimsuit pockets.

Two uniformed officers—PO Michael Rios of Patrol Borough Bronx and PO Edwin Garcia of the 41<sup>st</sup> Precinct—drove towards § 87(2)(b) in a marked police vehicle. PO Rios testified (Board Reviews 02 and 12) that he intended to issue § 87(2)(b) a summons, because he saw him with two cans of beer in a public place with the intent to drink them, although he never saw § 87(2)(b) with an open container of alcohol. PO Garcia testified (Board Review 03) that he did not initially see the containers of alcohol.

PO Rios and PO Garcia exited their vehicle, approached § 87(2)(b) on foot, and PO Rios told him that he could issue him a summons (see allegations not pleaded). § 87(2)(b) alleged that after verbally challenging that he could be issued a summons for unopened cans of beer and refusing to provide his identification, PO Garcia told him that he could be arrested (see allegations not pleaded).

§ 87(2)(b) eventually provided his driver's license, along with his transit worker identification card. § 87(2)(b) alleged that PO Rios responded, "Oh shit, you're a transit worker?" (**Allegation A**). PO Rios then issued § 87(2)(b) a summons (Board Review 04) (**Allegation B**). The summons was ultimately dismissed (Board Review 05). § 87(2)(g), § 87(4-b)

§ 87(2)(b)

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
§ 87(2)(b)
- A Notice of Claim inquiry was submitted with the New York City Comptroller's Office on November 10, 2016 (Board Review 07). The results will be added to the case file upon receipt.

### Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 08).
- PO Rios has been a member-of-service for 13 years and this is his first CCRB case.

### Findings and Recommendations

#### Allegations not pleaded

Stop, threat of summons, and threat of arrest allegations were not pleaded, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation A – Discourtesy: Police Officer Michael Rios spoke discourteously to § 87(2)(b)**

It is undisputed that PO Rios and his partner, PO Garcia, approached § 87(2)(b) with the intent to issue him a summons. It is further undisputed that § 87(2)(b) provided his transit worker identification card to PO Rios. § 87(2)(b) alleged that PO Rios responded, “Oh shit, you’re a transit worker?”

PO Rios testified that he did not say anything regarding § 87(2)(b)’s occupation and denied making the alleged discourteous statement. PO Rios denied using profanity at any point during the incident.

PO Garcia testified that PO Rios responded, “You’re a city worker?” PO Garcia testified that he did not recall if PO Rios responded, “Oh shit, you’re a transit worker?” PO Garcia denied hearing PO Rios use profanity at any point during the incident.

§ 87(2)(g)

**Allegation B –Abuse of Authority: Police Officer Michael Rios issued a summons to**

§ 87(2)(b)

It is undisputed that PO Rios issued a summons to § 87(2)(b) regarding two cans of beer which § 87(2)(b) possessed while at Orchard Beach in the Bronx. § 87(2)(b) denied that either can of beer was open, and said that after being approached by PO Rios, he demonstrated that the cans were sealed by turning them upside down.

PO Rios denied that § 87(2)(b) demonstrated that the cans were sealed, but he testified that he never saw § 87(2)(b) with an open container of alcohol. PO Rios testified that he issued § 87(2)(b) a summons for “intent to consume alcohol in a public place.” PO Rios testified that over the course of his career, he has issued approximately 720 summonses for intent to consume alcohol in a public place.

PO Garcia testified that he did not recall whether he ever saw § 87(2)(b) with an open container of alcohol, but PO Garcia also indicated that he never observed § 87(2)(b) do anything for which he could have been summonsed. PO Garcia testified that an individual may not be summonsed for a sealed container of alcohol.

The summons was prepared by PO Rios and indicates that § 87(2)(b) was observed to be in possession of two cans of beer with the intent to consume them in a public place. The title of the offense is listed as “open alcoholic container,” associated with New York City Administrative Code, Section 10-125, subsection 2b, but the summons does not otherwise indicate that either can of beer was open. As per the Bronx Criminal Court Summonses Office, the summons was ultimately dismissed.

An officer may issue a summons when a person possesses an open container of alcohol with the intent to consume it in a public place. New York City Administrative Code, Section 10-125(2b) (Board Review 09).

§ 87(2)(g)

§ 87(2)(g) [Redacted]  
[Redacted]  
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§ 87(2)(g), § 87(4-b) [Redacted]  
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Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date